

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION**

GILBERT J. CROCKRAN, et al.,)
Plaintiffs,)
v.) Case No. 4:13-CV-1120
MERS, et al.,)
Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1331, Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”)¹ hereby removes to the United States District Court for the Western District of Missouri, Kansas City Division, the case styled *Gilbert J. Crockran, et al v. MERS, et al.*, Case No. 1316-CV28209, from the Circuit Court of Jackson County, Missouri, in which it is now pending. Defendant states the following concerning its Notice of Removal:

1. On July 19, 2013, Plaintiffs Gilbert J. Crockran and Bernie R. Crockran, both proceeding pro se, filed their original Petition for “fraud & misrepresentation,” “bait and switch,” mail fraud, “bad faith,” forgery, embezzlement, “false enrichment,” conspiracy, and alleged violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”). A copy of the Petition is attached hereto as Exhibit A.
2. As of November 15, 2013, MERS has not yet been served with the Summons and Petition. Although a Summons was issued on September 17, 2013, and later mailed by Plaintiffs to MERS, Plaintiffs did not comply with Missouri Supreme Court Rule 54.16 in their attempt to serve MERS.

¹ MERS is improperly identified in the state court petition as “mortgage [sic] Electronic Registration System, Inc”.

3. In particular, Missouri Supreme Court Rule 54.16 allows service of process by mail if a copy of the summons and petition are mailed to the defendant “together with two copies of a notice and acknowledgment conforming substantially to Civil Procedure Form 4B or Civil Procedure Form 4C and a return envelope, postage prepaid addressed to the sender.” Plaintiffs failed to include the notice and acknowledgment form and the return envelope with the Summons and Petition mailed to Defendant in accordance with Rule 54.16.

4. Under Rule 54.16, “[i]f no acknowledgment of service under this Rule 54.16 is completed and returned to the sender, service of the summons and petition shall be made as otherwise provided by statute or rule.” *Id.* No such acknowledgment of service form has been filed by Plaintiffs with the Circuit Court of Jackson County. Instead, Plaintiff filed a certified mail return receipt with the Circuit Court of Jackson County on October 16, 2013. This proof of mailing and receipt does not constitute proper service of process by mail under Rule 54.16.

5. Although MERS has not been properly served, this Notice of Removal is filed within thirty (30) days of the date on which Plaintiffs filed their return receipts with the state court, and is therefore timely pursuant to 28 U.S.C. § 1446(b) regardless of the lack of proper service. Nevertheless, in Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 348 (1999) the Supreme Court held that the thirty (30) day window for removal under 28 U.S.C. § 1446(b) begins once *service* has been had, not simply when a defendant receives the summons. Accordingly, the clock has not yet begun to run on MERS’s window for removal.

6. This action is removable pursuant to 28 U.S.C. § 1441(a) because it is within the United States District Court’s jurisdiction under 28 U.S.C. § 1331 in that one of Plaintiffs’ counts arises under RICO (and another potentially arises for mail fraud), thereby creating a federal question. “A RICO claim is one arising under the laws of the United States and thus falls

within the district court's original jurisdiction and is removable pursuant to 28 U.S.C. § 1441."

Corpe v. Bank of Am., Case No. 2:12-CV4229-FJG, 2013 U.S. Dist. LEXIS 8177, at *6 (W.D. Mo. Jan. 22, 2013). For their RICO claim, Plaintiffs allege that "DEFENDANTS used the United States Postal Service to file and mail fraudulent loan documents that were forged and tampered with to the Crockrands that they knew were false from Covenant Title and wire transfer to Hillcrest Bank escrow account." (Pet., Count Nine.) Although it is unclear, Plaintiffs may also assert that MERS has committed mail fraud through its use of the U.S. mail through "[f]raudulent wire transfers and use of the U.S. Mail to mail documents to plaintiffs that were tampered with & fraudulent." (Pet., Count Three.) The defendants in this latter count are unidentified.

7. This Court has supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1337(a) because these causes of action stem from identical events as, and indeed serve as the premise for, Plaintiffs' RICO and mail fraud counts. As a result, these claims all form part of the same case or controversy under Article III of the United States Constitution.

8. A copy of this Notice of Removal will be filed in the Circuit Court of Jackson County, Missouri and served upon Plaintiffs.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1446 as the United States District Court for the Western District of Missouri, Kansas City Division, geographically embraces the state court in Jackson County, Missouri in which Plaintiff filed his state court action.

10. A complete copy of the state court file is attached hereto as Exhibit B.
WHEREFORE, Defendant Mortgage Electronic Registration Systems, Inc. hereby removes this case from the Circuit Court of Jackson County, Missouri to this Court for all further

proceedings, as provided by law, and requests that, pursuant to 28 U.S.C. § 1446, the Circuit Court for the County of Jackson, Missouri proceed no further unless and until such further Order of this Court.

Dated: November 15, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of November, 2013, the foregoing was served via United States mail, first class, postage prepaid, to the following parties:

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